

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

UNITED STATES OF AMERICA)	
Plaintiff)	
)	
vs.)	Civil Action No. _____
WAL-MART STORES, INC.;)	
WESTERN BUILDERS, INC.;)	
ROGERS-O'BRIEN CONSTRUCTION)	
CO.; D/B CONSTRUCTORS, INC.;)	
JAYNES CORPORATION; GERALD)	
A. MARTIN, LTD.; W.S. BOWLWARE)	
CONSTRUCTION, INC.; VRATSINAS)	
CONSTRUCTION CO.;)	
CONSTRUCTION SUPERVISORS,)	
INC.; DALMAC CONSTRUCTION,)	
INC.; AND WILLIAMS)	
DEVELOPMENT &)	
CONSTRUCTION, INC.)	
Defendants)	

WHEREAS, plaintiff, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), has filed the Complaint in this matter alleging that Defendants, Wal-Mart Stores, Inc., ("Wal-Mart"), and Western Builders, Inc., Rogers-O'Brien Construction Co., D/B Constructors, Inc., Jaynes Corporation, Gerald A. Martin, Ltd., W.S. Bowlware Construction, Inc., Vratsinas Construction Co., Construction Supervisors, Inc., Dalmac Construction, Inc., and Williams Development & Construction, Inc., (herein collectively referred to as "the Contractors," who are more specifically identified in Appendix A to this Consent Decree) have violated the Clean Water Act, 33 U.S.C. §1251 *et seq* ("the Act"), including the conditions and limitations of the Construction Storm Water General Permits of September 9, 1992 (57 Federal

Register 41217 – 41226, February 17, 1998 (63 F.R. 7858 – 7920) and July 6, 1998 (63 F.R. 36489 – 36519), and

WHEREAS, the United States, Wal-Mart, and the Contractors have consented to the entry of this Decree without trial of any issues and hereby stipulate to the Court that in order to resolve the issues stated in the Complaint, this Consent Decree should be entered.

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication or admission of any issue of fact or law except as provided in Paragraph 1, below and upon consent and agreement of the parties, it is hereby ORDERED, DECREED, and ADJUDGED as follows:

1. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Section 309 of the Act, 33 U.S.C. §1319, and 28 U.S.C. §§ 1331, 1345 and 1355. The Complaint states a claim upon which relief may be granted under Section 309 of the Act, 33 U.S.C. §1319.
2. The provisions of this Consent Decree shall apply to and be binding upon the United States and upon Wal-Mart, its officers, directors, agents, trustees, servants, employees, successors, assigns, attorneys, and all persons, firms and corporations acting under the control or direction of Wal-Mart in the construction of Wal-Mart-owned stores. This Consent Decree shall not be applicable to store construction sites at which Wal-Mart is or will be lessee, or to construction sites of Wal-Mart distribution centers. This Consent Decree shall also be binding upon the Contractors where it is specifically made applicable to them, but in no other regard.
3. It is the express purpose of the parties in entering into this Consent Decree to further the objectives of the Clean Water Act, as set forth in §101, 33 U.S.C. §1251. The goal of this Consent Decree shall be that Wal-Mart comply fully with the standards of compliance mandated by the Clean

Water Act and applicable regulations. All construction, remedial actions, maintenance, monitoring, reporting and other obligations in this Decree or resulting from the activities required by this Decree shall have the objective of causing Wal-Mart to be and remain in full compliance with the Act and with the terms and conditions of the NPDES Construction General Storm Water Permit in effect in the EPA Region or (where the NPDES storm water program is delegated to the state) in the state where the Wal-Mart construction site is located, and any renewals or repromulgations of, or amendments or successors to said permits, and with the provisions of applicable federal and State laws and regulations governing storm water discharges from construction sites in excess of five (5) acres or more.

IV. WAL-MART STORM WATER MANAGEMENT PLAN

A. REMEDIAL ACTIONS (CONTRACTOR OVERSIGHT)

4. During the term of this Consent Decree, Wal-Mart shall undertake a compliance program that will, at a minimum, consist of the following components as set forth in Paragraphs 5 through 33 below. Wal-Mart's failure to implement any of the components set forth in Paragraphs 5 through 33, except in accordance with the terms of Paragraph 39 (Force Majeure), or by approval of the Court, will constitute a violation of this Consent Decree. General references contained in Paragraphs 6 through 33 of this Consent Decree to "contractor(s)" or "general contractor(s)" shall not be construed to relate to or impose obligations upon the Contractors who are parties to this Consent Decree).

5. Paragraphs 6 through 10 are to be complied with prior to the commencement of any site excavation at a Wal-Mart owned construction site. Wal-Mart also agrees to have filed a Notice of Intent prior to site excavation at each subject construction site.

Development of Best Management Practice Videotape

6. Within Sixty (60) days after the entry of this Consent Decree, Wal-Mart will develop and produce a videotape on storm water control best management practices ("BMPs"). The videotape will be provided to general contractors of each Wal-Mart-owned store construction site prior to commencement of site excavation or construction for showing to all contractor and subcontractor supervisors involved in construction activities. If the videotape to be developed and produced by Wal-Mart is not prepared and distributed within sixty (60) days after the date of entry of this Consent Decree, Wal-Mart will obtain and make available to its general contractors a videotape of storm water control best management practices that is generally accepted in the construction industry until the Wal-Mart videotape is available.

Designation Of Storm Water Coordinator

7. Wal-Mart will designate a Storm Water Coordinator (SWC) to be responsible for coordinating oversight of storm water compliance by Wal-Mart and its general contractors for all Wal-Mart store construction sites covered by this Decree.

General Contractors' Storm water Coordinators

Review Of Storm Water Issues As Part Of Award Of Construction Contract

9. As part of the awarding of a construction contract by Wal-Mart, Wal-Mart will review a checklist of storm water documents and issues with the General Contractor. That checklist will include the following:

- (a) The acknowledgment by the General Contractor of its obligation to obtain a copy of the applicable storm water construction general permit(s) from the applicable authority or from the project engineer.
- (b) The requirement of filing of a Notice of Intent by the General Contractor, which is in

addition to the Notice of Intent required to be filed by Wal-Mart;

- (c) The necessity for and planning of the pre-construction meeting described in the following paragraph;
- (d) The requirement that all appropriate storm water controls be in place prior to the commencement of construction as provided in ¶10, herein;
- (e) The necessity of certification by the General Contractor to Wal-Mart that such storm water controls are in place prior to the commencement of construction as described said ¶10 herein; and
- (f) The potential for imposition of the contractual stipulated penalty of \$5,000 as provided in ¶10, herein, for failure to certify or for making a materially inaccurate certification.

Preconstruction Meeting and Certification of Controls

stores entered into after the entry of the Consent Decree that, before commencement of any site excavation, the general contractor at each Wal-Mart-owned store construction site certify in writing to the Wal-Mart SWC that:

- (a) A meeting has been conducted by the general contractor with superintendents of the general contractor and excavation subcontractor(s);
- (b) At such meeting, (a) the applicable General Construction Storm Water Permit ("the Permit") requirements, the Storm Water Pollution Prevention Plan ("SWPPP") and drawings, and other environmental requirements for the site were discussed; and (b) a storm water best management practices videotape was shown to such persons; and
- (c) All necessary storm water controls have been installed downgradient pursuant to the Erosion & Sediment ("E&S") Control Plan in the area(s) of the site to be initially

excavated, or if not a phased E&S Plan, then according to the best professional judgment of the general contractor.

- (d) The General Contractor has obtained a copy of the storm water permit applicable to the site, and that such copy is present in the site construction office.

Such contracts shall also provide that general contractor shall be subject to a stipulated penalty of \$5,000 (payable to Wal-Mart) for failure to certify, or for materially inaccurate certification, of the foregoing matters. Such damages shall be in addition to other remedies provided by contract or law, including those set forth in the construction contract between Wal-Mart and its contractor.

Weekly Inspections of Storm Water Controls by General Contractors

contractors in its construction contracts for Wal-Mart-owned stores entered into after the entry of the Consent Decree:

- (a) The general contractor's site superintendent, or his designee who is qualified by training or experience, shall conduct an inspection of the storm water BMP control devices on the project site no less often than weekly, and within twenty-four (24) hours following a rain of 0.5 inches or greater as determined by a rain gauge located on the site;
- (b) All repairs or modifications to the storm water BMP control devices found to be necessary as a result of such inspections shall be made within seven (7) days of the date of inspection;
- (c) The general contractor shall be required to prepare, at the conclusion of the inspection, a report of the inspection described in (a) above, and specifically address in such report the status of corrective action on any deficiencies in compliance with storm water requirements determined to exist in any report of inspection of a Wal-Mart

Construction Manager (as provided herein), or of a regulatory agency.

- (d) Reports of the weekly inspection shall be made a part of the storm water control records at the site, and copies of such reports shall also be forwarded, at the time the report is completed, to Wal-Mart's Storm Water Coordinator.

Site Inspections by Wal-Mart Construction Managers ("CMs")

owned store construction sites to which they are assigned for apparent deviations (as defined herein) from the applicable storm water requirements for the sites during their regular periodic site inspections (as defined herein). The CM inspection shall include the presence at the project construction office of the necessary permits, notices, SWPPP, E&S control drawings, and other documents required to be maintained at the site by the applicable permit; the presence of weekly contractor inspection reports; and the presence of storm water BMP control devices on the site and whether they appear to be adequate to control erosion at the site.

13. The CM shall prepare a Site Observation Report ("SOR") following each such inspection. A copy of the SOR shall be provided to the site superintendent of the general contractor at the conclusion of the inspection. Any apparent deviations from BMPs noted on the SOR will be discussed with the site superintendent. The CM will instruct the site superintendent to correct any deviations within a period of seven (7) days from the date of the inspection. If additional time for such correction is necessary, the contractor shall obtain the approval of the CM.

14. Any opinion of deviation made by a CM pursuant to the procedures contained herein shall not constitute an admission of liability or declaration against interest by Wal-Mart or any of its general contractors that there is or has been a violation of law. This Consent Decree will not be construed to create any remedy against the CM personally or against Wal-Mart for failure to note a deviation so

long as the CM has exercised, in good-faith, his or her best judgment.

15. "Periodic" site inspections shall mean an annual average of one inspection per month over all projects, but not less than three (3) inspections per project during construction.

Follow-up Contact With Contractor's Site Superintendent

17. In the event that a site is found to have the same deviations for two consecutive observations by the CMs, the SWC will, within seven (7) days after receipt of the second site observation report, submit that information to a Wal-Mart Director of Construction, who shall contact the site superintendent of the general contractor at such site and demand immediate compliance and apply available economic and other incentives. If the deviation has not been corrected by the following site observation, if any, the Vice President for Construction of Wal-Mart or his designee shall contact the owner/CEO of the general contractor, and invoke such contractual measures as are necessary to obtain correction, including the withholding of contractor progress payments, hiring of additional contractors to perform such correction at the general contractor's expense, termination of the construction contract, or other available remedies.

Posting of Wal-Mart Storm Water Coordinator Telephone Number at Sites

18. A conspicuous notice providing the telephone number of Wal-Mart's SWC shall be posted in the construction office at each site. This number shall be used, in addition to any other available means of communication by general contractors to discuss any storm water control issues that arise at the site, and to notify Wal-Mart of inspections of the site by EPA or other regulatory agency inspectors. If the SWC is not available to answer the phone at any time, a person or machine shall be available to answer or record a message.

Notification to Wal-Mart of EPA Inspections and Potential Violations

19. Wal-Mart will require its general contractors to notify Wal-Mart's SWC upon the commencement of an inspection by EPA or any other regulatory agency of any Wal-Mart-owned store construction site by use of the telephone number to be provided at the construction office at each project site as provided in the preceding paragraph. EPA agrees that it will also require its inspectors, upon entering a Wal-Mart-owned construction site, to notify in person the general contractor's site superintendent, if he or she is present, and to make a reasonable, good-faith effort to notify Wal-Mart's SWC by use of the telephone number described in ¶18, above, prior to the commencement of the inspection. Upon completion of any such inspection, and prior to leaving the construction site, the EPA inspector will contact the Wal-Mart SWC (by use of the telephone number described in ¶18 above) and conduct an oral exit interview with the general contractor's site superintendent or other representative and the Wal-Mart SWC, if available, in which the inspector will provide a summary oral review of all the facts and observations of the inspector regarding potential noncompliance of the site with requirements of the general storm water permit or other applicable regulatory requirements covered by the inspection. This review is to aid Wal-Mart in its own evaluations of its compliance with the law and to aid Wal-Mart in its consideration of taking corrective action prior to receiving EPA's Final Inspection Report. The contractor's representative and the Wal-Mart SWC shall make a written record of such facts and observations of the inspector on a form to be provided by Wal-Mart, and copies of such written record shall be provided to the general contractor's representative, Wal-Mart's SWC, and the inspector. However, neither the summary oral review or this record of inspection prepared by Wal-Mart and its contractor is intended to be an official report of inspection or a substitute for EPA's Final Inspection Report or to estop EPA from

determining or pursuing any violations.

Wal-Mart Provision of List of Sites to EPA

Consent Decree, provide EPA with a list of sites owned by Wal-Mart that are actively under construction or under contract for construction in the United States. Bi-monthly thereafter, Wal-Mart will provide to EPA a list of sites at which contracts have been entered into for construction of Wal-Mart-owned stores.

Final Inspection of Wal-Mart Owned Store Construction Sites

21. Wal-Mart and the general contractor at each Wal-Mart-owned store construction site will perform an inspection of the site at the conclusion of the construction project. This inspection will be performed by the contractor's qualified designee and the Wal-Mart CM for the site. The purpose of the inspection will be to ascertain whether all areas of the site have been finally stabilized in accordance with permit conditions and requirements, and the site is eligible to terminate permit coverage. This final inspection will be documented in a report signed and certified to by both persons named above and filed with the SWPPP. If all areas of the site have been finally stabilized in accordance with permit conditions and requirements, Notices of Termination (NOTs) of permit coverage will then be filed by Wal-Mart and the general contractor.

Annual Storm Water Seminar for Contractors and Others Involved in the Wal-Mart Storm Water Program

22. Wal-Mart shall conduct an annual seminar on the storm water permit requirements and BMPs for Wal-Mart CMs, SWC(s), general contractors and guests, consulting engineers and others substantially involved in Wal-Mart construction program.

Periodic Meetings Between Wal-Mart and EPA

23. During the term of this Consent Decree, the Vice President of Construction of Wal-Mart, or his/her designee, will meet with the Director of the Water Enforcement Division, Office of Enforcement and Compliance Assurance, EPA Headquarters, or his/her designee, at least once every calendar quarter, commencing three (3) months after the entry of this Consent Decree, or as mutually agreed in writing, to discuss Wal-Mart's storm water management program and its effect upon compliance with the storm water permit requirements.

Reporting of "Significant Events" at Wal-Mart Store Construction Sites

25. In the event of the occurrence of a significant event, Wal-Mart shall become obligated to pay a stipulated penalty of \$5,000. Wal-Mart shall not be prohibited in any way from contracting for and obtaining indemnity or other reimbursement for that or any other penalty from the general contractor.

Sampling and Analysis of Storm Water Discharges

26. Commencing with the signing of this Consent Decree by Wal-Mart, and for a period of one (1) year from the date of entry of this Consent Decree, Wal-Mart will submit to EPA (Water Enforcement Division, OECA) a list of store construction sites at which Wal-Mart plans to commence construction during the following calendar quarter. Of those sites, Wal-Mart will also designate five (5) sites at which Wal-Mart proposes to conduct the sampling and analysis (S&A) program of storm water discharges as provided herein. EPA shall, within ten (10) days after receipt of such list, advise Wal-Mart of five (5) additional sites on the list at which EPA proposes that such S&A program be conducted. All ten (10) sites selected by Wal-Mart and EPA shall be combined into a final list of sites that are candidates for the S&A program. Wal-Mart will then conduct the S&A program described herein at the first five (5) of such sites at which construction commences. If Wal-Mart determines to delay or defer construction at one of the five sites so selected for a period of more than sixty (60) days from the projected commencement date, it will

then conduct the S&A program described herein at the first site of the remaining sites in the final list described above at which construction will commence thereafter. This process will be repeated for future Wal-Mart store construction sites for each calendar quarter thereafter for a period of one (1) year from the date of entry of the Consent Decree, after which time Wal-Mart's obligation under this paragraph shall terminate.

27. Wal-Mart considers information regarding the location of future store sites to be highly confidential, and reserves the right to claim the information described in the foregoing paragraph to be confidential business information.

28. For each construction site selected to participate in the S&A program, Wal-Mart shall perform the following:

(i) Following each rainfall of 0.5 inches or greater at the site within a twenty-four (24) hour period, samples of storm water effluent leaving the site shall be taken as soon as 0.5 inch of rain has fallen, but, if the site is unmanned at that time no later than the next business day (Monday through Friday, holidays excepted); provided, however, that no more than one sampling shall be required for each week. One sample shall be taken at the monitoring points to be designated on the E&S plan or other appropriate document at the site.

(ii) Samples will be analyzed at certified laboratories for the following pollutants :

- (a) oil and grease
- (b) suspended solids
- (c) turbidity
- (d) conductivity
- (e) pH

(iii) One sample per month for each site shall also be analyzed for the following:

- (a) The following metals:
 - i. Arsenic
 - ii. Barium
 - iii. Lead
 - iv. Silver
 - v. Mercury
 - vi. Cadmium
 - vii. Chromium
 - viii. Selenium
 - (b) dissolved oxygen
 - (c) total organic carbon
- (iv) Preparation of a narrative report to be prepared simultaneously with the taking of the samples described above, stating the presence, location, condition and status of BMP storm water controls on the site or the presence of any natural conditions that may affect the quality of storm water discharges.
- (v) Wal-Mart will provide EPA (Water Enforcement Division, OECA) with a copy of the E&S Plan and the data derived from the S&A program for each of the sites subject to the S&A program at the end of the calendar quarter during which such site is under construction. During the quarterly meetings between Wal-Mart's Vice President of Construction and EPA's Director of Water Enforcement Division, OECA, EPA Headquarters, described in ¶23, above, Wal-Mart shall also provide for EPA's review in Wal-Mart's presence a copy of the narrative report described in subsection (iv) of this Paragraph, which report shall be returned to Wal-Mart without duplication, copying or photographing at the end of such meeting.
- (vi) Wal-Mart shall perform the S&A program at each of the sites selected to participate in the program according to ¶26, above, from the commencement of construction at such site until the Wal-Mart store building on the site is delivered to Wal-Mart for occupancy by the contractor ("the possession date"), at which time the S&A program for that site shall terminate.

29. The S&A program described above is to accommodate EPA's data-collection purposes only, and is not a regulatory requirement. The information obtained by EPA pursuant to this S&A program shall not be the independent basis of any enforcement action by EPA against Wal-Mart. EPA will not disclose the information gained by it through this program except as required by law.

Audit of Wal-Mart Storm Water Inspections by Independent Contractors

30. For a period of one (1) year from the date of entry of this Consent Decree, Wal-Mart will retain the services of an environmental consulting/engineering firm ("the consultant," whether one or more) or firms experienced in storm water management at construction sites. Personnel from such firm(s) will accompany Wal-Mart CMs at inspections of twenty (20) Wal-Mart-owned store construction sites to be selected on a random and nationally-apportioned basis by the consultant(s) over a period of one (1) year commencing from the date of entry of the Consent Decree. Wal-Mart shall provide EPA with a list of consultants who Wal-Mart believes are qualified, and EPA may disapprove in writing within ten (10) days of receipt of such list any such consultant thereon that it deems not qualified due to the consultant's prior contractual relationship with Wal-Mart or lack of relevant experience.

31. The purpose of the independent inspections by the consultants will be to audit conformity by the general contractors at the selected sites with the applicable permits and SWPPPs, and to recommend modifications in Wal-Mart's inspection and oversight procedures that the consultant(s) believe appropriate. The consultants will prepare a report of the inspection, and shall provide copies of such report to Wal-Mart. The consultants will also re-inspect within fourteen (14) days of the initial inspection any sites at which significant deviations from the storm water permit requirements were detected to determine whether corrective actions have been taken by the general contractor. In the event that corrective actions have not been taken by the contractor, the consultant will note such failure on its follow-up inspection

report, a copy of which shall be provided to Wal-Mart. EPA will also be provided a copy of the consultants' report for review during the quarterly meetings between EPA and Wal-Mart described in ¶23, above. It may not be photocopied and must be returned to Wal-Mart at the conclusion of the meeting.

32. The selection of qualified personnel from within such consulting/engineering firms shall be within the sole discretion of the consultant(s), and Wal-Mart shall have no responsibility for such selection of personnel or their qualifications. Wal-Mart shall give good faith consideration to adoption of recommendations of the consultant(s) for modifications to its storm water inspection procedures. In the event that Wal-Mart determines, after such consideration of the consultant's recommendations, not to adopt such recommendations, it shall provide its reason(s) for not doing so to EPA at the next quarterly meeting between Wal-Mart and EPA held under Paragraph 23 of this Consent Decree.

33. This audit program shall terminate one (1) year after the date of entry of the Consent Decree.

THE CONTRACTORS' SEPARATE REQUIREMENTS

34. During the pendency of this Consent Decree, each of the Contractors (more specifically identified in Appendix A to this Consent Decree) agree that, before commencement of site excavation at any construction site (other than a Wal-Mart owned store construction site), they shall certify in writing and include in the site SWPPP, that a meeting has been conducted with supervisory personnel of the general contractor and the excavation subcontractor regarding compliance with the requirements of the applicable Storm Water Construction General Permit and the SWPPP for the site, and the importance of maintaining storm water controls in place during the entire period of construction.

PENALTY FOR PAST VIOLATIONS

35. Within 30 day after entry of this Consent decree, Wal-Mart and the Contractors shall pay a civil penalty in cash of One Million and no/100 Dollars (\$1,000,000.00) in full satisfaction of the United States'

claim for penalties for Wal-Mart 's and the Contractors' alleged violations of the Clean Water Act, its NPDES Storm Water Construction General Permits of September 9, 1992 February 17, 1998, and July 6, 1998, at the Wal-Mart-owned construction sites named in Appendix B to this Consent Decree. Failure to pay the said civil penalty within the time set forth above shall result in the assessment of a stipulated penalty against Wal-Mart and the Contractors of Five Thousand Dollars (\$5,000.00) for each day that said penalty remains unpaid.

36. Payment of such penalty shall be payable to the "Treasurer of the United States" by Electronic Funds Transfer ("EFT" or wire transfer) to the United States Department of Justice lock box bank, referencing DOJ # 90-5-1-1-4510 and the USAO File Number. A confirmation of such transfer shall be forwarded to EPA Headquarters OECA, Attn: Brian Maas, Esq., and to the United States Department of Justice, Environment and Natural Resource Division, Environmental Enforcement Section, attn: Samuel Blesi, Esq.

RELEASE AND COVENANT NOT TO SUE

37. In consideration of the payment of the penalty described in ¶35, and the performance by Wal-Mart of the Contractor Oversight program described in ¶¶4 through 33, and the Contractors' undertaking contained in ¶34, the United States does hereby release and covenant not to sue Wal-Mart, Western Builders, Inc., Rogers-O'Brien Construction Co., D/B Constructors, Inc., Jaynes Corporation, Gerald A. Martin, Ltd., W.S. Bowlware Construction, Inc., Vratsinas Construction Co., Construction Supervisors, Inc., Dalmac Construction, Inc., and Williams Development & Construction, Inc. for any and all civil or administrative liability for violations or alleged violations of the conditions, limitations and requirements of the Clean Water Act National Pollutant Discharge Elimination System Storm Water Construction General Permits described in the preamble to this Consent Decree and as alleged in the United States' Complaint

at the Wal-Mart store construction sites listed in Appendix B to this Consent Decree to the date of this Decree, all of which projects have been completed. This Consent Decree does not resolve criminal liability, if any exists, of Wal-Mart or of the Contractors.

38. The United States does also hereby release Wal-Mart, its officers, directors, employees and agents, from any and all civil liability arising out of, or from further obligation to comply with, the following:

(i) an information request issued by the U.S. Environmental Protection Agency Headquarters Office of Enforcement and Compliance Assurance to Wal-Mart pursuant to Section 308 of the Clean Water Act dated June 19, 2000; (ii) an administrative order entitled "Findings of Violation and Order for Compliance" issued In the Matter of Wal-Mart Stores, Inc. and Western Builders Inc., Docket No. CWA-6-01-1001 by the U.S. Environmental Protection Agency, Region 6 dated October 10, 2000; and (iii) information requests issued pursuant to Section 308 of the Clean Water Act by: U.S. EPA Region 1 dated November 8, 1999 (Docket No. 2000-308-004); by U.S. EPA Region 3 dated August 18, 1999; and by U.S. EPA Region 6 dated October 6, 1999. Wal-Mart shall withdraw the pending appeal of its prior FOIA request to EPA. The United States does also hereby release and forever discharge the defendant Contractor, Western Builders, Inc., from any and all civil liability arising out of, or from further obligation to comply with, the administrative order described in (ii), above. This Consent Decree is in lieu of and supercedes any settlement-in-principle heretofore negotiated between the United States and the defendant Contractors, Jaynes Construction Co., Gerald A. Martin, Ltd., and D/B Constructors, Inc. regarding the construction sites listed with the names of such defendants in Appendix A to this Consent Decree.

39. If any event occurs that causes or may cause Wal-Mart to delay its performance of any provision of this Decree, Wal-Mart shall notify EPA Headquarters OECA, attn: Mr. Brian Maas, in writing within

ten (10) days of the event. The notice shall reference this section of the Decree and describe in detail the anticipated length of time the delay may persist, the precise cause(s) of and/or reason(s) for the delay, the measures taken or to be taken by Wal-Mart to prevent or minimize the delay and to prevent future delays and the timetable by which such measures will be implemented. Wal-Mart shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Wal-Mart to comply with the notice requirements of this Section shall constitute a waiver of Wal-Mart's right to seek an extension of time for performance of its obligations based on the unreported delay/event.

40. If EPA Headquarters OECA agrees that the delay has been or will be caused by circumstances beyond the control of Wal-Mart or any entity controlled by Wal-Mart, including its consultants and contractors, and that Wal-Mart could not have foreseen and prevented such delay, the time for performance of such requirement may be extended for a period not to exceed the actual delay resulting from such circumstance. Stipulated penalties shall not be due for the period of such excused delay. EPA shall notify Wal-Mart in writing of its agreement or disagreement with Wal-Mart's position within thirty (30) days of receipt of Wal-Mart's notice under the preceding paragraph of this Section. In the event EPA Headquarters OECA does not so agree, Wal-Mart may submit the matter to the Court for resolution pursuant to ¶¶44 and 45 of this Decree. If EPA disagrees with Wal-Mart's position, it shall explain in such notification the reasons for disagreement. If Wal-Mart submits the matter to the Court for resolution, and the Court determines that the delay was caused, in whole or in part, by circumstances beyond the control of Wal-Mart or any entity controlled by Wal-Mart, including its consultants and contractors, then Wal-Mart shall be excused as to that delay, but only for the period of time that the delay continues due to such circumstances.

41. Unanticipated or increased costs or expenses associated with the implementation of this Decree,

changed financial circumstances or technical infeasibility of meeting the sampling, analysis and monitoring requirements contained in §§26 through 29, or permit limitations, if any, contained in the NPDES Storm Water Construction General Permit, shall not, in any event, serve as a basis for changes in or extensions of time under this Decree.

42. Compliance with any requirement of this Decree, in itself, shall not constitute compliance with any other requirements. An extension of one compliance date based on a particular event or incident shall not necessarily result in an extension of a subsequent compliance date or dates. Wal-Mart must make an individual showing of proof regarding each requirement for which an extension of time is sought.

43. Wal-Mart shall bear the burden of proving that any delay or violation of any requirement of this Consent Decree was caused by circumstances beyond the control of Wal-Mart or any entity controlled by it, including its consultants and contractors. Wal-Mart shall also bear the burden of proving the duration and extent of any delay or violation attributable to such circumstances.

44. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party receives a written Notice of Dispute from the other.

46. During the pendency of this Consent Decree, EPA, its representatives, contractors, consultants and attorneys shall have the authority to enter any construction site owned by Wal-Mart at all times, upon proper presentation of credentials to the superintendent of such site or, in the superintendent's absence, to any person present on the premises, for the purposes of:

- (a) monitoring the progress of activities required by this Decree;

- (b) verifying any data or information submitted to EPA in accordance with the terms of the Decree;
- (c) obtaining samples and, upon request, splits or duplicates of any samples taken by Wal-Mart or its contractors or consultants; and
- (d) assessing Wal-Mart's compliance with this Decree and the Clean Water Act.

This paragraph shall not be construed to limit any statutory right of entry or other information gathering authority EPA might have.

47. This Consent Decree is not and shall not be interpreted as a permit or modification of an existing permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. §1342, nor shall it in any way relieve Wal-Mart or the Contractors of their obligation to obtain and comply with the requirements of an NPDES storm water construction general permit or an individual permit at any Wal-Mart construction site, or with any other applicable federal or state law or regulation. Any new permit, or modification of an existing permit, must be complied with in accordance with applicable federal and state laws and regulations. The pendency or outcome of any proceeding concerning the issuance, reissuance, or modification of an NPDES permit shall neither affect nor postpone Wal-Mart's obligations as set forth in this Decree.

48. The United States does not, by its consent to entry of this Decree, warrant or aver in any manner that Wal-Mart's compliance with this Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., or the NPDES Storm Water Construction General Permit now or hereafter in effect. Notwithstanding EPA's review and approval of any data, reports or plans formulated pursuant to this Decree, Wal-Mart shall remain solely responsible for compliance with this Decree and with the terms of the Act and the aforesaid NPDES Storm Water Construction General Permit(s).

49. This Consent Decree in no way relieves Wal-Mart or the Contractors of their responsibility to comply with any applicable federal, state, or local law, permit or regulation. Except as expressly specified herein,

nothing contained in this Decree shall be construed to prevent or limit the United States' rights to obtain penalties or injunctive relief under the Act or other federal statutes or regulations.

50. The parties agree that Wal-Mart and the Contractors are responsible for achieving and maintaining compliance with all applicable federal and state law, regulations and permits and that compliance with this Decree shall not be a defense to any action commenced pursuant to said laws, regulations, or permits.

51. This Consent Decree is not an admission of liability on the part of Wal-Mart or the Contractors to any of the allegations contained in the Complaint filed herein or contained in this Consent Decree. Also, this Consent Decree does not limit or affect the rights of Wal-Mart or the Contractors or of the United States as against any third parties, nor does it limit the rights of third parties not parties to this Decree.

52. Each party shall bear its own costs and attorney's fees in this action.

53. Except as otherwise provided for herein, when written notification to the United States, EPA, or Wal-Mart is required by the terms of this Consent Decree, it shall be addressed as follows:

As to the United States:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U. S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Mr. Brian Maas
Chief, Water Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

As to the Defendant Wal-Mart:

Vice President of Construction
Wal-Mart Stores, Inc.
Sam M. Walton Development Complex
2001 S.E. 10th Street
Bentonville, AR 72712 – 6489

With a copy to:

Richard H. Mays, Esq.
Environmental Legal Services
TCBY Tower – Suite 3285
425 West Capitol Ave.
Little Rock, AR 72201

For the Contractors, any notification shall be forwarded to the addresses contained in Appendix A to this Consent Decree.

54. All notifications or communications shall be deemed submitted on the date they are postmarked and shall be sent by certified mail, return receipt requested.

55. The execution of this Consent Decree is not an admission of liability by any Defendant, nor is it an admission or denial of the factual allegations arising out of the transactions or occurrences alleged in the Complaint, nor shall it be deemed a waiver of any rights or defenses not specifically waived by this Consent Decree.

56. The parties agree that nothing contained herein shall be admissible in evidence or for the purpose of impeachment in any judicial or administrative proceeding except in an action to enforce this Consent Decree.

57. This Consent Decree does not limit or affect the rights of the Plaintiffs or Defendants as against any parties other than the Plaintiffs or Defendant.

58. Except as provided in this Consent Decree, Plaintiff reserves any and all legal and equitable remedies

available to enforce the provisions of this Consent Decree, and Wal-Mart and the Contractors reserve any and all legal and equitable defenses that they may have to any actions brought by the Plaintiff.

MODIFICATION

59. No requirement or provision of this Consent Decree relating to obligations between Wal-Mart and the United States shall be modified for any reason except upon consent of Wal-Mart and the United States or by order of the Court. No requirement or provision of this Consent Decree relating to obligations between the United States and the Contractors shall be modified for any reason except upon consent of the United States and the Contractors or by order of the Court. No provisions of this Consent Decree shall be modified orally or altered in any way by the performance or conduct of the parties.

60. Except as expressly provided for herein, or other applicable law, this Consent Decree is without prejudice to and shall not be construed as a waiver or limitation of any rights, remedies, powers, or authorities, whether statutory or regulatory, legal or equitable, civil or criminal, administrative or judicial, that the Plaintiff may have pertaining to Defendants' compliance with any of the requirements of this Consent Decree, or any of the requirements of the Clean Water Act, the Clean Air Act, CERCLA, RCRA, EPCRA, or any other statutory, regulatory, or common law authority or permit condition.

61. This agreement represents the entire agreement of the parties.

62. The parties agree and acknowledge that final approval by the United States and entry of this Decree is subject to the requirements of 28 C.F.R. §50.7 which provides for notice of the lodging of this Decree in the Federal Register, an opportunity for public comment, and consideration by the United States of any comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.

63. The Court shall retain jurisdiction to enforce the terms and conditions of this Decree, to resolve disputes arising hereunder and for such other action as may be necessary or appropriate for construction or execution of the Decree.

64. This Decree shall terminate when Wal-Mart has paid all penalties due and has completed all remedial measures specified in ¶¶4 through 33 herein, and upon expiration of a period of two (2) years from the date of its entry.